IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8545 OF 1990

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

CHITRANJAN A SHASTRI

VERSUS

GUJARAT ELECTRICITY BOARD

Appearance:

MR TR MISHRA for petitioner

None present for respondent

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision: 20/12/2000

C.A.V. JUDGMENT

#. Challenge has been made by petitioner to the order

dated 11st September, 1990, Annexure-M, under which the petitioner's resignation from the services with effect from 17.4.90 was accepted. Another prayer has been made to declare and hold that the action of the respondent in treating the representation of the petitioner dated 3rd August, 1990 as resignation and accepting the same is illegal, invalid and inoperative. Other consequential benefits have also been prayed for. In prayer (A) of paragraph 23, the order dated 11.9.90, Annexure-M has been stated to be transfer order which is not correct.

#. The facts of the case are that the petitioner was holding the post of Executive Engineer in the Gujarat Electricity Board and at the relevant time, he was posted at Vadodara. Under the order dated 16.4.90, the petitioner was ordered to be transferred from Baroda to Deodar. The petitioner was posted at Vadodara on 31st May, 1986. Deodar was stated to be on the border of Rajasthan and Gujarat, a place situated in Banaskantha District. The petitioner stated that the aforesaid transfer order appears to have been issued pursuant to some complaints which appeared in the press, namely Loksatta, dated 14.3.90. The petitioner was relieved from the post of Executive Engineer, Vadodara, under the relieving order dated 18.4.90. The petitioner made a representation dated 18.4.90 against the order of his transfer. It is the grievance of the petitioner that that representation was neither considered nor rejected. Hence the petitieonr made another representation dated 10.5.90. The second representation also, what the petitioner stated, remained unattended and therefore the petitioner made third representation dated 30.6.90. It is the case of petitioner that he applied for earned leave for the period from 17.4.90 for ten days and he remained on earned leave upto 26.4.90. Thereafter he fell sick and submitted sick report dated 12.7.90 covering the period from 27.4.90 to 31.7.90. The petitioner again submitted sick report from 1.8.90 to 31.8.90 vide covering letter dated 31st July 1990. So as per petitioner, he remained on earned leave and sick leave for a period from 17.4.90 to 31.8.90. The petitioner received a letter dated 23.7.90 from the General Manager asking to report for duty not later than 28.7.90 and further to explain for the absence from duty. This letter dated 23.7.90 was received by him on 4.8.90. The petitioner submitted that he was under serious mental torture and sent a representation dated 3.8.90 which the respondent termed as resignation letter resigning from the services of the respondent presumably because of the fact that the representation is captioned as resignation. A copy of this letter/ representation of the petitioner

is there on the record as Annexure-K. The petitioner submitted that he had been in constant touch with the higher authorities to explain miseries of his life but was not given appointment and therefore the petitieonr was constrained to make written submission dated 4.9.90 to the Member, Administration of the Board. It is the grievance of the petitioner that that representation was neither replied nor rejected. The petitioner received a letter dated 11.9.90 under which his resignation was accepted with retrospective effect from 17.4.90 to the Board. He approached to the Hon'ble Chief Minister by the representation but when nothing has been done, he filed this petition.

#. the learned counsel for the petitioner contended firstly that it is not a case where the petitioner submitted any resignation. The document annexure-K was only representation of the petitioner against his transfer though it was captioned as resignation with notice pay in advance. It has next been contended that during the period when the petitioner was on earned leave, his resignation was accepted which is wholly arbitrary and unjustified. Lastly, it is contended that the petitioner's resignation has been accepted from the back date which is not permissible to the authorities. Additional contention has been raised that the transfer of the petitioner made from Vadodara to Deodar was wholly arbitrary and unjustified.

#. Nobody is present on behalf of respondent to oppose this special civil application.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the petitioner.

#. The petitioner was posted at Vadodara on 31.5.86 Though he has given out that he has prayed for his transfer but at the same time he also admitted that it was not a transfer on his request but on the exigency of work and interest of the Board, he has been posted at Vadodara. He has further, in support of his contention, stated that it cannot be taken to be a request transfer as the petitioner was also granted T.A. D.A. together with joining allowance in accordance with rules. As as per petitioner's own case, it was not a transfer on request to Vadodara. Under the order dated 16.4.90, the petitioner has been transferred from Vadodara to Deodar. In this special civil application, the petitioner has not challenged this order of his transfer from Vadodara to Deodar, however, during the course of arguments, the learned counsel for the petitioner has raised a

contention that this transfer was arbitrary and malafide. As this trasnfer order has not been challenged, it is not necessary for this court to go on and examine the contentions raised by learned counsel for the petitioner regarding its validity and to give any finding, but as the learned counsel for the petitioner has strongly raised all these contentions, I have considered it to be appropriate to deal with the same.

#. The petitioner's services are transferable on which question there is no dispute. The petitioner, as per his own case, was brought at Vadodara on exigencies of the services and in the interest of the Board. This transfer of the petitioner has been made after about four years of staying at Vadodara and if after such a long stay at Vadodara, he has been transferred, it is certainly in the exigencies of service and for administrative reasons. It is contended that some complaints were made against the petitioner and as a result of these complaints, he has been transferred. Even if it is taken to be so, it cannot be said to be a transfer in colourable exercise of powers by the respondent or contrary to the guidelines or malafide. If there are complaints against officers of the Board, taking into consideration the fact that his long stay at one place if transfer is made, it cannot be taken to be transfer in colourable exercise of powers or malafide. The petitioner has not alleged malafides against any of the officers. It is no more res-integra that for malafides, a person against whom it is alleged, is necessary party and by merely alleging so it cannot be said to be a case of malafide. It is also not the case of petitioner that his transfer is made in violation of some statutory provisions. The learned counsel for the petitioner during the course of arguments stated that this transfer has been made in violation of guidelines. Even if it is taken, still violation of guidelines will not give any enforceable right to the petitioner to file this petition under Article 226 of the Constitution in this court. The matter is squarely covered by decision of the apex court in the case of Union of India v. S.L.Abbas reported in AIR 1993 SC 2444.

#. From the facts of this case, I find that the petitioner did not want to leave Vadodara at any cost. This is clearly borne out from his own application annexure-K which starts from page No.41 and at page No.45 in this application, the petitioner stated, "I am not in a position to leave Baroda and report for duty at Deodar". When the petitioner has been relieved from services, he has not carried out that order. On the contrary, he applied for earned leave and it is not the

case of the petitioner that his earn leave has been sanctioned. On the contrary, the petitioner was called upon to comply with this order which has not been complied. This earned leave was applied by him on 17.4.90 for ten days and when it was not sanctioned, how it cannot be taken to be non compliance with the order of transfer. Thereafter, the petitioner made out a ground of sickness and if we go by the medical certificates produced by the petitioner, I am satisfied that illness of the petitioner was not to that extent where he could not have carried out the transfer order. Anxiety, depression and hypertension are of such nature of disease for which it is very difficult that the the officer of the rank of petitioner is justified not to carry out the transfer order. These certificates are nothing but only a ground for non complying with the transfer order. It is not the case where the petitioner was an indoor patient. When the petitioner was not admitted to hospital, I fail to see how this alleged illness of the petitioner can be taken to be a just and reasonable cause not to carry out the transfer order by the petitioner. The Board has also not accepted these applications. In fact, the petitioner has not joined the transferred place for this long period for the reason that he would have made during this period, attempts to get his order of transfer cancelled but when this has not been done, he has, as what he was not in a position to leave Vadodara, rightly taken the decision to resign from the services. In case where it is difficult for the officer of the Board to carry out transfer order, then it is open to him to resign from the services and rightly, the petitioner has opted for it and resigned from the services. The net result of the aforesaid discussion is that the transfer order of the petitioner was a pure and simple order of transfer in exigencies of service and for administrative reasons. When the petitioner has submitted his resignation, I fail to see how it can be a ground or grievance by the petitioner that it could not have been accepted during the period when he was on earned leave. It is submitted that there is not law nor it could have been where it is stated by learned counsel for the petitioner that during the earn leave the petitioner's resignation could not have been accepted. It is resignation of the petitioner and he submitted resignation when as per his own case, he was on leave and when he was not to serve the Board, the Board has rightly accepted the same.

#. Another contention raised by learned counsel for the petitioner that during the period of his sickness, resignation could not have been accepted is devoid of any

substance. Now, the petitioner cannot go against his own act where he desires to get himself free from services on these grounds. Then comes the contention raised that it was not a resignation letter but only letter or representation against the transfer order. I do not find any merits in this contention of the learned counsel for the petitioner. If we go by this letter, annexure-K dated 3.8.90, it leaves no doubt in the mind of the court that it is nothing but only a resignation voluntarily tendered by the petitioner. It was sent under the subject, "resignation with notice pay in advance". That is not the end here. The petitioner wanted to get himself relieved from services immediately and in lieu of notice of three months, along with this letter of resignation, he sent account payee cheque of Bank of Baroda No.019151 dated 1.8.90 of Rs.14,080/=. The petitioner made request therein also that his resignation may be accepted with effect from 31.8.90. From paragraph-9 of this letter, I find that the petitioner has given this resignation for the reason that he was not in a position to leave Vadodara and rightly when he was not in a position to leave Vadodara, he has to submit resignation which is what he did. From other recitals in this letter, it is clear that he has voluntarily given this resignation and he wanted to resign from services for which reference may have to sub-paragraps (I) to (VIII) of paragraph-9 thereof. This officer had voluntarily resigned and it has rightly been accepted by the respondents.

##. Then comes the last contention raised by learned counsel for the petitioner that resignation is accepted from retrospective effect which is bad and in support of this contention, the learned counsel for the petitioner placed reliance on the decision of the Apex court in the case of Punjab National Bank v. P.K.Mittal, reported in AIR 1989 SC 1083. The petitioner has prayed for acceptance of his resignation with effect from 31st August, 1990. When the petitioner himself has desired acceptance of his resignation from 31st August, 1990, I find sufficient merits that it could not have been allowed with effect from 7.4.90 as what it has been done in the present case. But another question which falls for consideration is whether only on this ground, this resignation is to be declared illegal, invalid and to the extent where same has to be quashed and set side and the respondent is to be directed to reinstate the petitioner in service with all benefits. The order of acceptance of the resignation of petitioner to the extent where it grants resignation from retrospective effect is severable and after severing that part of the order other part will

remain as valid to which no exception can be made. The decision on which reliance has been placed by learned counsel for the petitioner in the case of Punjab National Bank v. P.K.Mittal (supra) is hardly of any help and relevance in this case. The ratio of decision is on the basis of facts of that case. Here it is not the case that the petitioner has withdrawn his resignation before 31st August, 1990 or before the date of the order dated 11th September, 1990, the date on which same has been accepted. Relevance of this contention would have been there only where the petitioner would have applied for withdrawal of resignation before 31st August, 1990 or before the order dated 11th September, 1990. However, the petitioner desired his resignation to be accepted from 31st August, 1990 and it cannot be accepted from 17.4.90. To that extent, the petitioner deserves to be given relief and accordingly it is hereby declared that the petitioner's resignation from services is only effective from 31st August, 1990.

##. As a result of this declaration, the petitioner shall be entitled for consequential benefits as follow from this declaration. The special civil application succeeds to this extent only and Rule is also made absolute to this extent. As nobody has put appearance on behalf of respondent, no order as to costs.

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(sunil)